Patent
Serial No. 10/578,716
Appeal Brief in Reply to Final Office Action of February 13, 2009
and Advisory Action of April 27, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of   Atty. Docket: US030441

WILHILMUS F.J. VERHAEGH ET AL.   Confirmation No.: 3351

Serial No.: 10/578,716   Examiner: PINKAL R. CHOKSHI

Filed: MAY 10, 2006   Group Art Unit: 2425

Title: TWO-STEP COMMERCIAL RECOMMENDATION

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APPEAL BRIEF

Sir:

     Appellants herewith respectfully present its Brief on Appeal

as follows:

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REAL PARTY IN INTEREST

The real party in interest is Koninklijke Philips Electronics

N.V., a corporation of The Netherlands having an office and a place

of business at Groenewoudseweg 1, Eindhoven, Netherlands 5621 BA.

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RELATED APPEALS AND INTERFERENCES

To the best of Appellants' knowledge and belief, there are no related appeals or interferences.

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STATUS OF CLAIMS

Claims 1-15 are pending in this application. Claims 1-15 are rejected in the Final Office Action that issued February 13, 2009. This rejection was upheld in an Advisory Action that mailed on April 27, 2009. Claims 1-15 are the subject of this appeal.

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STATUS OF AMENDMENTS

An Amendment After Final Action was submitted on April 13, 2009 in response to a Final Office Action mailed on February 13, 2009. The Amendment After Final Action did not include any amendments. In an Advisory Action mailed on April 27, 2009, it is indicated that the Amendment After Final Action does not place the application in condition for allowance. This Appeal Brief is in response to the Final Office Action mailed on February 13, 2009, that finally rejected claims 1-15, which remain finally rejected in the Advisory Action mailed on April 27, 2009.

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SUMMARY OF CLAIMED SUBJECT MATTER

The present invention, for example as claimed in claim 1, relates to a method for selecting personalized commercials (e.g., see, present application, FIG. 3 showing a flow diagram for a method of selecting personalized commercials). The method includes providing, for each of a plurality of programs (e.g., see, present application, FIG. 2, programs 210, 212, 214, 216, 218 and page 5, lines 15-16), a score indicating a degree of preference of at least one user in relation thereto (e.g., see, present application, score S, FIG. 2, preferences indicated between user 205 and programs 210, 212, 214, 216, 218; FIG. 3, block 330; page 4, lines 1-14; page 5, lines 15-26 and page 7, lines 19-23); providing, for each of a plurality of commercials (e.g., see, present application, FIG. 2, commercials 260, 262, 264, 266, and page 5, line 16) respective correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs (e.g., see, present application, FIG. 2, correlation factors indicated between programs 210, 212, 214, 216, 218 and commercials 260, 262, 264, 266; page 4, lines 24-31; FIG. 3, block 320 and page

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7, lines 16-19); and providing, for each of the plurality of commercials, a metric indicating a degree of effectiveness in relation to the at least one user based on the scores and the respective correlation factors (e.g., see, present application, page 5, lines 1-4, page 6, line 24 through page 7, line 13; FIG. 3, block 340 within the loop created by block 350 such that the metric is provided for each of the programs and page 7, lines 22-23).

The present invention, for example as claimed in claim 10, relates to an apparatus for selecting personalized commercials (e.g., see, present application, FIG. 1, receiver 100). The apparatus includes means for providing, for each of a plurality of programs, a score indicating a degree of preference of at least one user in relation thereto (e.g., see, present application, FIG. 1, program recommender 160 shown coupled to the CPU 140 and page 4, lines 1-2); means for providing, for each of a plurality of commercials, respective correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs (e.g., see, present application, FIG. 1, commercial classifier 170 shown coupled to the CPU 140 and page 4, lines 24-31); and means for providing, for each of the plurality of

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commercials, a metric indicating a degree of effectiveness in relation to the at least one user based on the scores and the respective correlation factors (e.g., see, present application, FIG. 1, the program recommender 160 and the commercial classifier 170 are shown coupled to the CPU 140 and page 5, lines 1-4, page 6, line 24 through page 7, line 13; FIG. 3, block 340 within the loop created by block 350 such that the metric is provided for each of the programs and page 7, lines 22-23).

The present invention, for example as claimed in claim 12, relates to an apparatus for selecting personalized commercials (e.g., see, present application, FIG. 1, receiver 100). The apparatus includes a program recommender providing, for each of a plurality of programs, a score indicating a degree of preference of at least one user in relation thereto (e.g., see, present application, FIG. 1, program recommender 160 shown coupled to the CPU 140 and page 4, lines 1-2); a commercial classifier providing, for each of a plurality of commercials, respective correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs (e.g., see, present application, FIG. 1, commercial classifier 170 shown coupled to the

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CPU 140 and page 4, lines 24-31); and a processor providing, for each of the plurality of commercials, a metric indicating a degree of effectiveness in relation to the at least one user based on the scores and the respective correlation factors (e.g., see, present application, FIG. 1, the program recommender 160 and the commercial classifier 170 are shown coupled to the CPU 140 and page 5, lines 1-4, page 6, line 24 through page 7, line 13; FIG. 3, block 340 within the loop created by block 350 such that the metric is provided for each of the programs and page 7, lines 22-23).

The present invention, for example as claimed in claim 14, relates to a program storage device tangibly embodying a program of instructions executable by a machine to perform a method for selecting personalized commercials (e.g., see, present application, FIG. 1, memory 150 and page 3, lines 8-10), the method including providing, for each of a plurality of programs (e.g., see, present application, FIG. 2, programs 210, 212, 214, 216, 218 and page 5, lines 15-16), a score indicating a degree of preference of at least one user in relation thereto (e.g., see, present application, score S, FIG. 2, preferences indicated between user 205 and programs 210, 212, 214, 216, 218; FIG. 3, block 330; page 4, lines 1-14; page 5,

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lines 15-26 and page 7, lines 19-23); providing, for each of a plurality of commercials (e.g., see, present application, FIG. 2, commercials 260, 262, 264, 266, and page 5, line 16), respective correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs (e.g., see, present application, FIG. 2, correlation factors indicated between programs 210, 212, 214, 216, 218 and commercials 260, 262, 264, 266; page 4, lines 24-31; FIG. 3, block 320 and page 7, lines 16-19); and providing, for each of the plurality of commercials, a metric indicating a degree of effectiveness in relation to the at least one user based on the scores and the respective correlation factors (e.g., see, present application, page 5, lines 1-4, page 6, line 24 through page 7, line 13; FIG. 3, block 340 within the loop created by block 350 such that the metric is provided for each of the programs and page 7, lines 22-23).

It should be explicitly noted that it is not the Appellants' intention that the currently claimed methods, apparatus and program storage device be limited to operation within the illustrative methods, apparatus and program storage device described above beyond what is required by the claim language. Further description

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of the illustrative methods, apparatus and program storage device
is provided above indicating portions of the claims which cover the
illustrative methods, apparatus and program storage device merely
for compliance with requirements of this appeal without intending
any further interpreted limitations be read into the claims as
presented.

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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-15 of U.S. Patent Application Serial No. 10/578,716 are obvious under 35 U.S.C. §103(a) over U.S. Patent 6,177,931 to Alexander ("Alexander") in view of U.S. Patent 7,146,627 to Ismail ("Ismail").

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ARGUMENT

Claims 1-15 are said to be obvious over Alexander in view of
Ismail.

Appellants respectfully request the Board to address the
patentability of independent claims 1, 10, 12, and 14, and further
claims 2-9, 11, 13, and 15 as respectively depending from one of
independent claims 1, 10, 12, and 14, based on the requirements of
independent claims 1, 10, 12, and 14 and claims 2 and 11, based on
the separately patentable elements disclosed in claims 2 and 11.
This position is provided for the specific and stated purpose of
simplifying the current issues on appeal. However, Appellants
herein specifically reserve the right to argue and address the
separate patentability of claims 3-9, 13, and 15 at a later date
should the separately patentable subject matter of claims 3-9, 13,
and 15 later become an issue. Accordingly, this limitation of the
subject matter presented for appeal herein, specifically limited to
discussions of the patentability of independent claims 1, 10, 12,
and 14 and dependent claims 2 and 11, is not intended as a waiver

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of Appellants' right to argue the patentability of the further claims and claim elements at that later time.

Alexander describes making improvements over previous Electronic Programming Guides, including providing opportunities for the commercial advertiser to reach the viewer and utilization of viewer profile information to provide customized presentation of advertising to the viewer (see Abstract). In particular, as referenced in the Final Office Action at page 4, line 1 of the Final Office Action, Alexander at col. 28, lines 11-21 describes requesting that "the viewer provide certain profile information" (see, col. 28, lines 13-14) and if the viewer declines, "attempt to 'learn' the information" (see, col. 28, line 21).

Ismail shows a method and apparatus for delivery of targeted video programming (see, Ismail, abstract).

In the Final Office Action and the Advisory Action, it is alleged that Alexander teaches (emphasis added) "providing, for each of a plurality of commercials, respective correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs" as recited in claim 1 and as substantially recited in each of claims 10, 12 and 14.

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Both the Final Office Action and the Advisory Action states that "Alexander discloses (col. 32, lines 24-34) that the EPG uses viewer's profile information, where viewer selected his favorite programs, to customized advertisements related to his/her favorite programs."

Appellants respectfully submit that the Examiner is mistaken. Alexander at col. 32, lines 24-34 states (emphasis added):

> The EPG and the <u>Profile Program</u> use Viewer Profile
> information to tailor the presentation and scheduling
> of advertisements to the viewer and to customize the
> presentation of the EPG for the user. For instance, the
> EPG uses Viewer Profile information to determine
> whether to notify the viewer about scheduling for a
> program involving the viewer's favorite team, a talk
> show involving a star player from that team, etc. The
> EPG is capable of such customized
> notification/advertisement through e.g., an
> advertisement in the Ad Window, or through an
> advertisement in a Virtual Ad Channel Slot.

Clearly this portion of Alexander, or any portion for that matter has nothing to do with the above claim limitation. The Advisory Action states that "Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references."

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In this case, Appellants are pointing out that Alexander is wholely deficient in teaching, disclosing or suggesting the indicated claim recitation. It is not even clear to Appellants how the Examiner is interpreting Program profile information that is utilized to tailor the presentation and scheduling of advertisements as shown in Alexander, is being interpreted as teaching, disclosing or suggesting "correlation factors indicating respective degrees of effectiveness [of each commercial] in relation to each of the plurality of programs" as recited in the claims.

It is respectfully submitted that such "correlation factors" are not taught, disclosed or suggested by Alexander.

The Final Office Action and Advisory Action also indicate that Alexander shows the claim recitation "providing, for each of the plurality of commercials, a metric indicating a degree of effectiveness in relation to the at least one user based on the scores and the respective correlation factors" as recited in claim 1 and as substantially recited in each of claims 10, 12 and 14.

The Final Office Action and Advisory Action states that "Alexander discloses (col. 32, lines 35-39) that the EPG and the

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profile program use Viewer profile information to personalize the

scheduling of telecast advertisements that are related to the

television program that the viewer is watching. Alexander further

discloses (col. 33, lines 3-40) that when viewer is watching "Nova"

(an educational science program), EPG displays an advertisement for

educational computer. Alexander further discloses (col. 34, lines

4-8) that the EPG displays different depending upon which program

the viewer is currently watching."

Alexander in the cited sections state:

Additionally, the EPG and the Profile Program use
Viewer Profile information to customize the
presentation and/or scheduling of telecast
advertisements that are viewable during the real time
telecast of the television program that the viewer is
watching...

For example, consider two viewers who are both watching
television at 8:00 p.m. on a Tuesday night. When the
one viewer who has been watching "Nova" enters the EPG,
the EPG might display an advertisement for educational
computer; ...

Using this method, the EPG displays different
advertisements depending upon, e.g., which show the
viewer has currently highlighted in the Grid Guide,
what sport is highlighted in a sports data service, or
what type of news is highlighted in a news service
(international, local, etc.).

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The Advisory Action states that "it is clearly determined that Alexander provides targeted advertisement which depends on user's favorite program and this targeted advertisement is correlated to the program user's watching." While the Appellants do not dispute that Alexander teaches targeted advertising that is based on a watched program, what is not clear is how the Advisory Action then makes the jump to "[b]ased on this facts, one skilled in the art can clearly determined that there is a degree of effectiveness between a program and a commercial regardless a value provided for commercial or not."

It is respectfully submitted that nowhere within these sections of Alexander or any sections for that matter is "a metric indicating a degree of effectiveness in relation to the at least one user based on the scores and the respective correlation factors" as recited in claim 1 and as substantially recited in each of claims 10, 12 and 14. There is no disclosure or suggestion in Alexander of indicating such a metric. Certainly none of the sections cited in the Final Office Action and Advisory Action teach, disclose or suggest the correlation factors recited in the claims.

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Further, as discussed above, Alexander does not even teach, disclose or suggest "correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs" so clearly, Alexander is deficient in teaching a metric based on the correlation factors.

Based on the foregoing, the Applicants respectfully submit that independent claims 1, 10, 12, and 14 are allowable over Alexander in view of Ismail and an indication to that effect is respectfully requested. Claims 2-9, 11, 13, and 15 depend respectively from one of claims 1, 10, 12, and 14 and are accordingly allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

Regarding claims 2 and 11, claim 2 recites "for each of the plurality of commercials, the providing the metric comprises summing, over each of the plurality of programs, a product of the score for each of the plurality of programs and the correlation factor for each of the plurality of commercials relative to each of the plurality of programs" as also substantially recited in claim

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11.   While the Final Office Action cites the above noted sections of Alexander for teaching this claim recitation, clearly, no such teaching exists within the noted sections nor even anywhere within the four corners of Alexander.

Based on the foregoing, the Appellants respectfully submit that dependent claims 2 and 11 are patentable over Alexander in view of Ismail for respectively depending on one of claims 1 and 10 as well as for the above indicated separately patentable subject matter and notice to this effect is earnestly solicited.
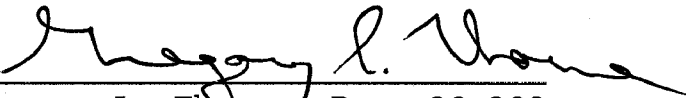
In addition, Appellants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Appellants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

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CONCLUSION

Claims 1-15 are patentable over any of Alexander and Ismail.

Thus the Examiner's rejection of claims 1-15 should be reversed.

Respectfully submitted,

By _____
Gregory L. Thorne Reg. 39,398
Attorney for Appellants
June 30, 2009

THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101

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APPENDIX A

CLAIMS ON APPEAL

1. (Previously Presented) A method for selecting personalized commercials, said method comprising the steps of:

providing, for each of a plurality of programs, a score indicating a degree of preference of at least one user in relation thereto;

providing, for each of a plurality of commercials, respective correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs; and

providing, for each of the plurality of commercials, a metric indicating a degree of effectiveness in relation to the at least one user based on the scores and the respective correlation factors.

2. (Previously Presented) The method as claimed in claim 1, wherein: for each of the plurality of commercials, the providing the metric comprises summing, over each of the plurality of programs, a product of the score for each of the plurality of

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programs and the correlation factor for each of the plurality of commercials relative to each of the plurality of programs.

3.   (Previously Presented)   The method as claimed in claim 1, wherein said method further comprises the step of: selecting at least one of the plurality of commercials to provide to the at least one user based on its metric.

4.   (Previously Presented)   The method as claimed in claim 1, wherein: for each of the plurality of programs, the providing a score indicating a degree of preference of the at least one user comprises using a program recommender.

5.   (Previously Presented)   The method as claimed in claim 1, wherein: for each of the plurality of commercials, the respective correlation factors are provided by advertisers associated therewith.

6.   (Previously Presented)   The method as claimed in claim 1, wherein: the programs comprise video programs.

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7.   (Previously Presented)   The method as claimed in claim 1, wherein: the programs comprise television programs.

8.   (Previously Presented)   The method as claimed in claim 1, wherein: the programs comprise audio programs.

9.   (Previously Presented)   The method as claimed in claim 1, wherein: the programs have audio and video portions.

10.   (Previously Presented)   An apparatus for selecting personalized commercials, said apparatus comprising:

means for providing, for each of a plurality of programs, a score indicating a degree of preference of at least one user in relation thereto;

means for providing, for each of a plurality of commercials, respective correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs; and

means for providing, for each of the plurality of commercials, a metric indicating a degree of effectiveness in relation to the at

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least one user based on the scores and the respective correlation factors.

11. (Previously Presented) The apparatus as claimed in claim 10, wherein: the means for providing the metric sums, over each of the plurality of programs, a product of the score for each of the plurality of programs and the correlation factor for each of the plurality of commercials relative to each of the plurality of programs.

12. (Previously Presented) An apparatus for selecting personalized commercials, comprising:

a program recommender providing, for each of a plurality of programs, a score indicating a degree of preference of at least one user in relation thereto;

a commercial classifier providing, for each of a plurality of commercials, respective correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs; and

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a processor providing, for each of the plurality of commercials, a metric indicating a degree of effectiveness in relation to the at least one user based on the scores and the respective correlation factors.

13. (Previously Presented) The apparatus as claimed in claim 12, wherein: the processor provides the metric by summing, over each of the plurality of programs, a product of the score for each of the plurality of programs and the correlation factor for each of the plurality of commercials relative to each of the plurality of programs.

14. (Previously Presented) A program storage device tangibly embodying a program of instructions executable by a machine to perform a method for selecting personalized commercials, the method comprising:

providing, for each of a plurality of programs, a score indicating a degree of preference of at least one user in relation thereto;

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providing, for each of a plurality of commercials, respective correlation factors indicating respective degrees of effectiveness in relation to each of the plurality of programs; and

providing, for each of the plurality of commercials, a metric indicating a degree of effectiveness in relation to the at least one user based on the scores and the respective correlation factors.

15. (Previously Presented) The program storage device as claimed in claim 14, wherein the providing the metric comprises summing, over each of the plurality of programs, a product of the score for each of the plurality of programs and the correlation factor for each of the plurality of commercials relative to each of the plurality of programs.

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APPENDIX B

Evidence on Appeal

None

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APPENDIX C

Related Proceedings of Appeal

None